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STATE OF DELAWARE
BOARD OF FUNERAL SERVICES

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PUBLIC MEETING MINUTES:	BOARD OF FUNERAL SERVICES
MEETING DATE AND TIME:	Tuesday, July 22, 2014, 10:00 a.m.
PLACE:	861 Silver Lake Boulevard, Dover, Delaware Conference Room B , second floor of the Cannon Building
MINUTES APPROVED:	September 23, 2014

MEETING MINUTES

MEMBERS PRESENT

S. Keith Parsell, Professional Member
Mary Byrd, Public Member
Bill Torbert, Professional Member
Danna Levy, Public Member

MEMBERS ABSENT

Chad Chandler, Professional Member, President
Duwayne Casini, Professional Member
Jane Hovington, Public Member

DIVISION STAFF/DEPUTY ATTORNEY GENERAL

Kevin Maloney, Deputy Attorney General
Sheryl Paquette, Administrative Specialist III
Flora Peer, Administrative Specialist II
Gayle MacAfee, Deputy Director

OTHERS PRESENT

Scott Clemens

CALL TO ORDER

Mr. Parsell called the meeting to order at 10:10 a.m.

REVIEW AND APPROVAL OF MINUTES

The Board reviewed the minutes of the May 22, 2014 meeting. Mr. Parsell said under 'Correspondence' Bennie Smith's temporary location of funeral service should list it as the 'Millsboro location', not 'Milford' as written in the minutes. Ms. Byrd made a motion, seconded by Mr. Torbert, to approve the minutes as corrected. The motion carried unanimously.

ADOPTION OF THE AGENDA

Mr. Parsell requested to amend the agenda by adding item '3.2.2 Thomas Trader Funeral Director – Licensure Issue' under Unfinished Business. Ms. Levy made a motion, seconded by Mr. Torbert, to adopt the agenda as amended. By unanimous vote, the motion carried.

UNFINISHED BUSINESS

Rules and Regulations – Elimination of Embalming Room Requirement for Firms with Multiple Locations

Mr. Parsell reminded the Board that he discussed this at the March 25th meeting. Mr. Maloney said he agreed with the proposed language but was unsure where the Board felt it needed to be placed in the statute. He said this would require a statutory amendment, not a regulation change, and said it will be part of the statutory changes that will happen in the Sunset review process. Mr. Maloney suggested Section 3117a(5) as a possible placement for this change and asked the Board to consider where they felt it should be placed. He reminded the Board of the previously agreed upon wording; "Funeral establishments with multiple branch locations in Delaware operate under the same trade name or owned by the same owner(s) are required to maintain an embalming area in at least one of those Delaware locations and the embalming area shall be disclosed on the appropriate establishment license."

Thomas Trader, Funeral Director -- Licensure Issue

Ms. Paquette explained that Mr. Trader called the Division and requested that his probation be lifted on his license. In checking his disciplinary order, Ms. Paquette found out that his CE documents were sent in previously, but were sent to the wrong person. All necessary documents were once again submitted. Mr. Torbert made a motion, seconded by Ms. Levy, to lift probation and restore Mr. Trader's license. By unanimous vote, the motion carried.

NEW BUSINESS

RATIFICATION OF LICENSURE

None

REVIEW OF RESIDENT INTERN REPORTS

Joshua Schoenberg (3rd quarterly reports & 9 embalming reports)

Mr. Torbert reviewed the report. Ms. Levy made a motion, seconded by Ms. Byrd, to approve the report as presented. By unanimous vote, the motion carried.

REVIEW OF APPLICATIONS FOR LICENSURE

Edward Conway, Funeral Director

Mr. Parsell said Mr. Conway's application was submitted at the last Board meeting. The Board decided at that time it needed more clarification regarding Mr. Conway's education and Embalming license. The Board wanted to know if Mr. Conway had a Funeral Director's license as well. Mr. Conway submitted further documentation to the Board to be reviewed. Mr. Torbert reviewed the information and made a motion, seconded by Ms. Levy, to approve Mr. Conway for licensure. By unanimous vote, the motion carried.

Spencer Groff, Funeral Director

After reviewing Mr. Groff's failing test results, Ms. Levy made a motion, seconded by Ms. Byrd, to deny licensure to him.

David Bradley, Funeral Director by Reciprocity

Mr. Torbert reviewed the application. Ms. Byrd made a motion, seconded by Ms. Levy, to approve the licensure application of Mr. David Bradley contingent on his passing the state exam. The motion passed unanimously.

McPherson Embalming & Funeral Service Inc. – Funeral Establishment Permit

After Board review, Ms. Levy made a motion, seconded by Mr. Torbert, to approve issuance of a permit to McPherson Embalming & Funeral Service, Inc. The motion passed unanimously.

Scott Clemens, Funeral Director

Mr. Parsell reviewed the application. Mr. Torbert made a motion, seconded by Ms. Levy, to approve the licensure application of Mr. Scott Clemens contingent on his passing the state exam. The motion passed unanimously.

REVIEW OF APPLICATIONS FOR CONTINUING EDUCATION APPROVAL
The Dodge Institute for Advanced Mortuary Studies, November 13 – 14, 2014
Embalming – The Challenges & The Rewards, Requesting 9 CEUs

National Funeral Directors & Morticians Association, Inc., August 2 – 7, 2014

Tour of Pierce Chemicals Plant, Requesting 2 CEUs
Convictions vs Feelings: Caring for the Dead, Requesting 1.5 CEUs
NFDMA & IFDA of Texas Public Day, Requesting 2 CEUs
New Members & Convention Orientation, Requesting 1 CEU
Getting The Most Out of Your Printer, Requesting 1 CEU
The Dawn of a New Day, Requesting 2 CEUs
Change & Transformation Part II, Requesting 1.5 CEUs
Funeral Home Owners & Managers Master Class 2014, Requesting 1 CEU
Sexual Harassment In The Funeral Service Industry...It Can Happen To You, Requesting 2 CEUs
Owner's Round Table: Best Kept Secrets for Funeral Director's Success, Requesting 1 CEU
Nine Things Every Funeral Home Must Know, Requesting 1 CEU
Knowledge Is Power: Dispelling Myths & Creating Alignment with Today's Consumers, Requesting 1.5 CEUs
Exhibit Hall Education & History Museum, Requesting 2 CEUs
"How Will You Be Remembered? Theory and Application to Understanding Today's Consumer," Requesting 1 CEU
Publicizing Your Personal Brand And Staying in Demand, Requesting 1 CEU
And When You Look At The Water You Will Always See Me...Burials At Sea, Requesting 1 CEU
Strengthening Hospice Relationships for Better Service to Families, Requesting 1 CEU
Making Funeral Arrangements in a Wrongful Death Case: A Professional Compassionate Approach to Advising a Family Before Arrangements are Complete, Requesting 1 CEU
Mortuary Student Day, Requesting 2 CEUs
A Good Goodbye: Funeral Planning For Those Who Don't Plan To Die, Requesting 1 CEU
Understanding Obituary Piracy & How To Regain Control of Your Online Obituaries, Requesting 1 CEU
Embalming Bariatric & Edema Cases, Requesting 1.5 CEUs

Ms. Byrd reviewed the applications for continuing education and made a motion, seconded by Ms. Levy, to approve them as submitted. The motion carried unanimously.

COMPLAINT UPDATES AND CONSENT AGREEMENTS

COMPLAINT UPDATES

Complaint 27-03-14 (not assigned) New Complaint

Complaint 27-04-14 (not assigned) New Complaint

Both new complaints are being processed through the Investigative process.

HEARING OFFICER RECOMMENDATIONS

None

CONSENT AGREEMENTS

None

CORRESPONDENCE – None

JOINT SUNSET REVIEW PROCESS

Board of Funeral Directors – 2014 Recommendations for Legislation

Mr. Maloney stated he brought a list of topics he thought the Board might want to discuss as future statutory changes. Mr. Parsell handed out copies of current statutes and regulations for Board review. He stated he highlighted areas he felt needed discussion by the Board. Ms. Byrd thanked them both for being prepared.

Mr. Maloney listed the following topics he thought the Board might want to discuss:

- Inspection authority
- Concept of combination firms
- Interstate transportation and removal of human remains
- Funeral processions
- Definition of embalming
- Incorporate the elimination of embalming rooms requirement of firms with multiple locations

He said he also noticed two items he thought might have typos or need technical corrections:

- Title 24, Del. C. §3106(a) – He asked the Board to look at 3106(a), 4th line down where it states, “or display any sign or advertise in any manner as being a Funeral Director **or provide funeral services**, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice funeral services.” He said he feels it should read, “**provider of funeral services**.”
- Title 24, Del. C. §3120(a) – He asked the Board to also look at 3120(a), 1st line down, “the custodian of those remains must obtain, **for** the nonresident Funeral Director...” He asked if the Board felt it should say, “**from** the nonresident Funeral Director.” Mr. Parsell said if the death occurred in Delaware and is going out of state to another nonresident Funeral Director of Delaware, the permit has to be obtained ‘to them’. He said the statement is written correctly as is.

The Board discussed the following regulations items:

- Inspection Authority
Mr. Maloney asked if the Board should have a regulation in place for the purposes of inspecting a funeral home once an application is submitted for licensure, but prior to approval of the license. Mr. Torbert said he believed this would require a legislative change to establish inspectors to do this. Mr. Parsell asked Ms. MacAfee if the Division had inspectors currently that could go out and inspect funeral homes if the Board created a checklist of what needs to be inspected. Ms. MacAfee said the Division has contractual employees that are part-time inspectors for other Boards. Mr. Parsell asked if the Board would have to find a way to fund an inspection process they establish. Ms. MacAfee explained to the Board how the Division is funded. She said there would need to be a fiscal note attached to the new legislation. She explained that the sponsors of the Joint Sunset Committee would bring the issue to the Legislature to be passed, just like any other legislation. Mr. Torbert asked if the board would oversee crematories as well. He said since they are under DNREC it may be something to consider. Mr. Maloney said he has reviewed other states for appropriate language for this. Mr. Torbert said Maryland has re-done all their crematory statutes. Mr. Maloney said the Board could put something in the Board’s ‘powers’ section, to the effect that the Board has the authority to work with the Division to adopt and implement an inspection program. The specifics of that program can be worked out in the Rules and Regulations. He said he would develop the language for the Board to review and determine the next steps to take.
- Combination Cemetery / Funeral Home Scenario
Mr. Parsell pointed out that the Board’s current regulations don’t support this. Mr. Maloney said the Sunset Review Committee has identified this as an issue for Board review. Mr. Maloney and Mr. Parsell quoted statutes Title 24, Del. C. §3119(2) and 3119(3) respectively. After reading these statutes Mr. Maloney agreed the Board’s statutes covered this issue.

Mr. Parsell asked about the definition of Funeral Director, as stated in statute Title 24, Del. C. §3101(5). He read the statute to the Board and asked if it meant that anyone that owns a cemetery is not ‘engaged in the process of burial or entombment or cremation’, or does the statute only apply to those

with a Funeral Director's license? Mr. Maloney said this only applies to Funeral Director licensees. Mr. Parsell asked, then, if anyone without a Funeral Director's license could own a cemetery, crematory, or funeral home; theoretically, in the confines of one location. He asked also, if you have a Funeral Director working for you on the property, but the owner and all the other people are not licensed, and perhaps they do the selling, etc. of all the merchandise, does that create an exemption? Mr. Maloney said he didn't believe it did because statute Title 24, Del. C. §3123 basically states that you have to be a licensed Funeral Director or intern to engage in funeral services. Mr. Maloney read statute Title 24, Del. C. §3123 to the Board. Mr. Parsell gave an example of someone that had purchased both a cemetery and a funeral home and ran both of them without being licensed. When the legality of it was questioned he said he was told the owner was not a licensed Funeral Director, and therefore, was allowed to run both. Mr. Maloney said the court would say it's not the role of any board or professional licenser to determine who can own an operation of any sort. Unless they can give a compelling reason as to why that is the case.

- Financial Trusts

Mr. Parsell asked if the Board's regulations regarding financial trusts pertain only to licensed Funeral Homes and Funeral Director's, or do they apply to anyone accepting money for funeral arrangements. He read Title 5, Del. C. §3402, Banking Commission statute, to the Board. After discussing the issue the Board decided not to respond to it at the present time, but to continue to follow it.

- Interstate Transportation of Human Remains

The Board noted that there are no regulations that govern this issue at this time. Mr. Parsell said this issue came up due to institutions that have removed decedents from the state for organ donations. He questioned whether or not a license is needed for this. He talked about a facility in Salisbury, Maryland that picks up decedents in Delaware and performs cremations at their facility. He said he questioned one agency and was told they were allowed to do this because there is a federal regulation that allows them to do it. The Board discussed where the death certificate should be issued and said they felt it should be issued at the place of death and should be signed by a Funeral Director. Mr. Torbert said he believes that all decedents that have died in Delaware should be required to have Delaware permits and death certificates, and anything else that Delaware requires. He said there should be a written protocol as to who is signing off on the death certificate for an outside funeral home. Mr. Parsell talked about Delaware's temporary burial transit permit and said he doesn't believe this is being used and should be done away with. Mr. Maloney asked where that form (known as the Interstate Transportation of Human Remains form) is obtained and was told it is obtained from licensed Funeral Directors. Mr. Maloney asked the Board if they felt statute Title 24, Del. C. §3108 'limited license section' or Title 24, Del. C. §3120 'interstate transportation of human remains' should be eliminated. Mr. Torbert said Title 24, Del. C. §3108 states the limited license affects those working over the line, for instance in Pennsylvania, who have families they are serving but that family may have someone that passes away in Delaware. This license would allow them to do funeral business under their Pennsylvania license without contacting a Delaware funeral home to do all their paperwork. Ms. Byrd said she feels Title 24, Del. C. §3108 should stay the way it is. Mr. Parsell suggested the Board continue to discuss the temporary burial transit permit and changes that may need to be made. The Board decided to continue this discussion at the next meeting.

- Funeral Processions

Mr. Parsell handed out documents with suggested changes he had made for Board review. He talked about the limited liability being eliminated from the regulations. He said he added wording that is currently written in Florida's rules that he felt needed to be included. The Board said the changes looked good. Mr. Parsell said he would email them to Ms. Paquette for distribution.

- Embalming

Mr. Parsell said this issue has come up from time to time. Mr. Maloney said he researched surrounding states for their definitions of embalming and compared those with the definition in the dictionary. He

said they are very similar. Mr. Parsell said one of the areas he is concerned about when they talk about embalming are the people that work in the embalming room 'assisting,' but are not licensed Funeral Directors. He said people need to assist during this process but legally there is no category saying they can do that. Mr. Parsell asked the board to look over one of the documents he handed out that discusses embalming in Title 14. He asked them to specifically look at page 2, items #13 and #14 which discussed 'students of mortuary science' and 'embalming assistants'. He suggested if the Board is going to have this category in their statute they should have a definitive definition as to what is included as the official act of embalming. Mr. Maloney said he will develop language to be reviewed at the next meeting.

- Elimination of Embalming Rooms at all Locations

This was previously discussed by the Board and is part of the final review. Mr. Parsell said he brought the idea up of eliminating multiple embalming rooms during the State Association meeting and they said they were in favor of it.

- Crematory Regulation with Regard to Advertising

Mr. Maloney said he didn't have any suggestions for changes to this regulation. A member of the public in attendance, Mr. Clemens, asked the Board if the name of his funeral home would still meet the legal guidelines per the Board's regulations if it were translated into Spanish for advertising purposes. Mr. Maloney read 12.3.2 of the Board's rules and said it does not address translation issues; however, he felt that as long as the name was accurately translated it could still be covered by the rules.

At this point, Mr. Parsell said there are a lot of items to still go over and asked the Board if they would like to review the materials and continue this discussion at their next meeting and the Board agreed.

- Age Limit

Mr. Parsell said he believed there was some concern among some legislators about the current exemption for licensees older than 65-years-old. He said he brought that up at the state association meeting. He also added wording in the handouts to possibly increase that limit to 70 years old. Ms. MacAfee said she believes the Legislature wants to ensure that Delaware laws are consistent with national standards. Mr. Parsell said he doesn't believe on the national level that exemptions for age limits even exist in some states.

Mr. Parsell talked about a few of the items for discussion in his handouts. He said some of them were included based on the feedback from members of the state association meeting he recently attended. He said the suggestion was made at that meeting to increase the 24-hour rule to 36 hours due to people traveling, delays, etc. They agreed there needed to be a clear determination made as to how long a decedent can be held in refrigeration before embalming must take place. Mr. Parsell said he included extended period cases as well; such as, Arlington which may need a special exemption. He said there can be delays of 4-6 months and that would violate Delaware's laws.

OTHER BUSINESS BEFORE THE BOARD (for discussion only)

Mr. Parsell asked Ms. Paquette if she invited the Maryland Board of Funeral Services to the meeting and she replied she had, but that she hadn't heard from them.

PUBLIC COMMENT

None

NEXT MEETING

The next Board meeting was incorrectly listed on the agenda as September 30th. The next Board meeting will actually be held on Tuesday, September 23, 2014, at 10:00 a.m. in Conference Room B located on the second floor of the Cannon Building at 861 Silver Lake Boulevard, Dover, Delaware.

ADJOURNMENT

There being no further business, Ms. Levy made a motion, seconded by Ms. Byrd, to adjourn the meeting at 12:10 p.m. The motion to adjourn carried unanimously.

Respectfully submitted,

A handwritten signature in cursive script, reading "Sheryl Paquette", written over a horizontal line.

Sheryl Paquette
Administrative Specialist III

The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Board members and the public in supplementing their personal notes and recall for presentations.